

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, a limited liability company,
also d/b/a Point Break Media, Point Break Solutions, and
Kivanni Marketing,

DCP MARKETING, LLC, a limited liability company, also
d/b/a Point Break,

MODERN SPOTLIGHT LLC, a limited liability company,

MODERN SPOTLIGHT GROUP LLC, a limited liability
company, also d/b/a Modern Spotlight,

MODERN INTERNET MARKETING LLC, a limited
liability company,

MODERN SOURCE MEDIA, LLC, a limited liability
company, also d/b/a Modern Source,

PERFECT IMAGE ONLINE LLC, a limited liability
company,

DUSTIN PILLONATO, individually and as an officer of
Pointbreak Media, LLC, DCP Marketing, LLC, and Modern
Source Media, LLC,

JUSTIN RAMSEY, individually and as an officer of
Pointbreak Media, LLC,

AARON MICHAEL JONES, a/k/a Michael Aaron Jones
and Mike Jones, individually and as an officer of Pointbreak
Media, LLC,

RICARDO DIAZ, individually and as an officer of
Pointbreak Media, LLC,

FILED BY ~~V~~ D.C.

MAY - 7 2018

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

**RULE 65(b)(1)
CERTIFICATION AND
DECLARATION OF EVAN
MENDELSON IN SUPPORT
OF PLAINTIFF'S EX PARTE
MOTIONS FOR
TEMPORARY
RESTRAINING ORDER AND
TO TEMPORARILY SEAL
THE DOCKET**

Filed Under Seal

MICHAEL POCKER, individually and as an officer of Modern Spotlight LLC and Modern Spotlight Group LLC,

STEFFAN MOLINA, individually and as an officer of Modern Spotlight Group LLC and Perfect Image Online LLC,

Defendants.

I, Evan Mendelson, declare as follows:

1. I am over eighteen years of age and a citizen of the United States. I am one of the attorneys representing the Federal Trade Commission (“FTC” or “Commission”) in the above-captioned action.
2. I am a member in good standing of the bar of the District of Columbia, and I am authorized to practice in this Court on behalf of the FTC pursuant to Rule 4(d) of the Court’s Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys. My work address is 600 Pennsylvania Avenue, NW, Mail Stop CC-9528, Washington, DC 20580. Unless stated otherwise, I have personal knowledge of the facts stated herein and, if called as a witness, would competently testify thereto.
3. I submit this certification pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure in support of the FTC’s *Ex Parte* Motion for a Temporary Restraining Order and Memorandum in Support Thereof (“TRO Motion”). I also submit this certification in support of the FTC’s *Ex Parte* Motion to Temporarily Seal the Docket and Entire File, filed contemporaneously with the TRO Motion.
4. Pursuant to Fed. R. Civ. P. 65(b)(1), this Court may issue a TRO without notice to Defendants if the facts show that immediate and irreparable injury will result to the applicant if

notice is given and if counsel “certifies in writing any efforts made to give notice and the reasons why it should not be required.” For the reasons stated below, the FTC has not provided Defendants with notice of this action or of the FTC’s TRO Motion. The interests of justice require that the FTC’s motion be heard *ex parte*.

5. The issuance of a non-noticed *ex parte* TRO is appropriate to serve the “underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer.” *See VIP Cinema, LLC v. Eurokeyton S.A.*, 2012 WL 5398672, at *2 (S.D. Fla. Nov. 2, 2012) (quoting *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974)). The *ex parte* TRO in this case is necessary to stop an ongoing fraud, freeze assets for consumer redress, and preserve evidence.

6. As described more fully in the TRO Motion and its accompanying exhibits, there is good cause to believe that immediate and irreparable harm will occur if Defendants receive advance notice of any aspect of this action and if the FTC’s present filings are not under seal. The evidence shows that unless this Court seals the docket, the FTC’s ability to obtain, and this Court’s ability to provide, complete and effective final relief will be irreparably harmed. The evidence further establishes that the FTC is likely to prevail on the merits of its actions against Defendants, and that Defendants will be liable for consumer injury resulting from their unlawful scam.

DEFENDANTS’ WILLINGNESS TO DISREGARD THE LAW

7. Defendants engage in unlawful conduct by making false claims during robocalls and live sales pitches to convince small business owners to pay hundreds of dollars for Google listing “claiming and verification” services. On these calls, Defendants claim that they are affiliated with Google and that the owners’ businesses will be removed from Google search

results unless they pay Defendants. Defendants, in fact, are not affiliated with Google, and consumers' businesses are not in danger of removal.

8. Defendants also claim that they can assign certain "keywords" to small businesses' online profiles, so that those businesses will appear higher in search results. The claiming and verification process, in fact, does not allow businesses to assign themselves keywords, and Defendants do not provide businesses with Google-linked keywords at all.

9. Several days after Defendants make their initial sale, Defendants pitch a "Citation Program," promising first-page or first-place placement in Google search results. Defendants' claim is false because first-page placement through such a search engine optimization program cannot be guaranteed. In fact, Citation Program enrollees do not receive the promised results.

10. Defendants' deceptive practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

11. Defendants have also engaged in unauthorized billing practices.

12. In October 2017, Bank of America Merchant Services closed Defendant Pointbreak Media, LLC's ("Point Break") merchant bank account due to predatory services, scare tactics, and high chargeback rates. Point Break then wrote itself hundreds of checks, without authorization, using prior or existing customer checking account data.

13. Point Break's use of consumer checking account information for unauthorized debits is an unfair billing practice in violation of Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

DEFENDANTS' WILLINGNESS TO DISREGARD COURT ORDERS

14. Individual Defendants Justin Ramsey and Aaron Michael Jones are violating orders from previous FTC actions by operating this scam.

15. Ramsey is presently under a federal court order in *FTC v. Justin Ramsey, et al.*, Case No. 17-cv-80032-KAM (S.D. Fla.). This order bans him from placing robocalls to numbers listed on the Do Not Call Registry, bans him from placing out-bound robocalls unless he can prove the calls are to businesses, and requires him to disclose immediately the name of the caller on all outbound sales calls. At the time that Ramsey agreed to these provisions, he already was violating them through Point Break. Specifically, Point Break called phones numbers on the National Do Not Call Registry, places robocalls to phones numbers that are not affiliated with businesses, and does not identify itself on outbound telephone calls, instead claiming to be Google or an affiliate of Google.

16. Jones is presently under order in *FTC v. Aaron Michael Jones, et al.*, Case No. 17-cv-00058-DOC-JCG (C.D. Cal.). This order bans him from all telemarketing, including owning a company engaged in telemarketing. The FTC served Jones with a copy of the Order, but he nevertheless maintained his status as an owner and manager of Point Break.

17. Similarly, Defendant Dustin Pillonato is violating a Florida court order that bans him from among other things, “using any false or misleading statement to induce any person to pay for goods and services.” As demonstrated in the TRO Motion, Defendants regularly use false or misleading statements to induce small business owners to pay them.

18. Defendants have used several different corporate entities and aliases in an attempt to disguise their identity from defrauded consumers and to evade law enforcement. Defendants change corporate identities or aliases about every six months, but continue the same scam. Furthermore, Defendant Point Break instructed its employees to identify themselves as working for “Point Break Solutions,” an unaffiliated company located in Las Vegas, Nevada.

ILLUSTRATIVE CASES

19. It has been the Commission's experience that defendants who engage in deceptive and unfair practices, and who receive notice of the filing of an action by the FTC, often attempt to undermine the FTC's efforts to preserve the status quo by immediately dissipating or concealing assets and/or destroying documents. I am reliably informed that in the Eleventh Circuit, the following has occurred since the year 2000:

- a. In *FTC v. Hargrave & Associates*, No. 3:08-cv-1001 (M.D. Fla. 2012), the FTC sought and obtained an *ex parte* TRO with an asset freeze in conjunction with a motion to show cause why the defendants should not be held in contempt. After being personally served with the TRO, one defendant withdrew \$19,000 from accounts he failed to disclose to the receiver. To avoid being held in contempt of the TRO, the defendant returned some, but not all, of the money.
- b. In *FTC v. Fereidoun "Fred" Khalilian*, No. 1:10-cv-21788 (S.D. Fla. 2010), the FTC sought and obtained an *ex parte* TRO with an asset freeze. Before the asset freeze could be processed by the banks, one of the defendant's employees withdrew approximately \$60,000 from the company's bank accounts. The defendant eventually returned some, but not all, of the money. Additionally, the defendant attempted to remove assets located in his personal residence. The receiver, however, was monitoring the defendant's residence and, after observing people taking a number of items from the defendant's residence at night, was able to halt the defendant's activities.
- c. In *FTC v. Global Mktg. Group, Inc.*, No. 8:06-cv-2272 (M.D. Fla. 2006), the court granted the FTC's *ex parte* motion for a TRO with an asset freeze, which the FTC served on banks known to hold accounts of defendants. After being served with the

order, one of the defendants successfully withdrew over \$500,000 from accounts previously unknown to the FTC. Most of these funds were wired to offshore bank accounts. This defendant ultimately was held in contempt of court and fled the country after failing to appear at a show cause hearing.

d. In *FTC v. American Entertainment Distrib., Inc.*, No. 1:04-cv-22431 (S.D. Fla. 2004), the Court entered an asset freeze that froze assets of ten corporate and individual defendants. Within hours of receiving notice of the asset freeze, one of the individual defendants withdrew \$39,500 from his bank. Because the asset freeze had been in place, the FTC was able to compel the individual defendant to return the money.

e. In *FTC v. Access Res. Servs., Inc.*, No. 0:02-cv-60226 (S.D. Fla. 2002), a defendant who learned about the FTC's action attempted to dissipate \$579,600 by paying off the mortgage on his residence.

f. In *FTC v. Leisure Time Mktg., Inc., et al.*, No. 6:00-cv-1057 (M.D. Fla. 2000), the court entered a TRO against the defendants with immediate access to the business premises. After an individual defendant was served and acknowledged his understanding that he was to preserve all assets and documents, that defendant ordered individuals to remove boxes of documents from one of the business premises. Fortunately, a police officer assisting the FTC in the immediate access saw this activity, and the FTC was able to contact the defendant's counsel and have the documents returned. That individual defendant also attempted to hide certain documents on the business premises in a room where FTC staff was informed that no business records were stored. Because the FTC had immediate access to the business premises, the FTC found these documents.

20. I am reliably informed of the following examples from other Circuits:

a. In *FTC v. American Home Servicing Center, LLC*, No. 8:18-cv-0597 (C.D.

Cal. 2018), the FTC sought and obtained a TRO, asset freeze, and immediate access to the business premises. One defendant, who was present during the immediate access, informed another defendant, who was not present, about the action. The absent defendant promptly withdrew at least \$15,500 from one of the corporate accounts shortly after the receiver's arrival at the business premises. The FTC and receiver are still working to recover the funds.

b. In *FTC v. RevMountain, LLC*, No. 2:17-cv-02000 (D. Nev. 2017), the FTC

sought and obtained a TRO, asset freeze, and immediate access to multiple business premises. During the immediate access, there was a three-minute delay between when the receiver or his representatives entered two different locations. This delay allowed a defendant at the first location to instruct an employee at the second location to take a \$100,000 check drawn on the defendant's home equity line of credit before the receiver could gain access to the second location. The check was taken to the defendant's lawyer but was not cashed because the asset freeze and TRO were in place.

c. In *FTC v. Kutzner*, No. 8:16-cv-999 (C.D. Cal. 2016), the FTC sought and

obtained an asset freeze against a defendant who was not initially named in a complaint and *ex parte* TRO. The defendant transferred \$215,000 out of a corporate bank account not covered by the initial freeze the day after the receiver took control of the corporate entities. The court found the transfers indicative that the defendant would likely dissipate or otherwise render monetary damages unrecoverable and granted an expanded asset freeze.

d. In *FTC v. Asset & Capital Management Group*, No. 8:13-cv-01107 (C.D. Cal. 2013), fully one week after the Court granted, and the FTC served upon all defendants, an *ex parte* TRO that froze defendants' assets and appointed a Receiver, the Receiver identified an additional business site that defendants had failed to disclose after receiving repeated assurances from defendants that they had disclosed all of their business locations. The undisclosed site turned out to be the defendants' headquarters and contained extensive business records, including corporate and tax records, bank statements, and personnel files for dozens of defendants' entities. The Receiver arrived at the site unannounced. He found a defendant and his colleague carrying folded bankers boxes from their car to the site, clearly intent on removing materials from the premises. When the Receiver gained entry to the site, he found evidence that desktop computers and records had recently been removed. The FTC subsequently learned that more than 60 servers and extensive records had been taken.

e. In *FTC v. E.M.A. Nationwide, Inc.*, No. 1:12-cv-02394 (N.D. Ohio 2012), the court denied the FTC's motion for an *ex parte* TRO and corporate asset freeze. Within a week of the required notice, the individual defendants had withdrawn more than \$152,000 from a corporate bank account.

f. In *FTC v. Data Med. Capital, Inc.*, No. 8:99-cv-1266 (C.D. Cal. 2009), the FTC moved for contempt and obtained an *ex parte* TRO and asset freeze against certain defendants. The defendants learned of the FTC's contempt investigation, and one of the defendants transferred over \$900,000 to a personal bank account prior to the FTC's filing. The receiver, who was appointed pursuant to the *ex parte* TRO, traced these assets

and returned them to the receivership estate. The receiver's compensation for these tasks, however, reduced the amount available for redress to the defendants' victims.

g. In *FTC v. Transcon. Warranty, Inc.*, No. 1:09-cv-2927 (N.D. Ill. 2009), the FTC moved for a TRO with notice to the defendants. The notice was given, and the Court granted the FTC's motion for a TRO, freezing defendants' assets and appointing a receiver. However, when the receiver and counsel for the FTC arrived at the corporate defendant's premises pursuant to the court's order, hundreds of folders with labels indicating that they contained records of defendants' most recent transactions were found empty. In addition, five computers, including that of the corporate defendant's CFO, were allegedly stolen the night before the receiver and counsel for the FTC arrived at the premises. Furthermore, various third-party trade debtors of the corporate defendant froze payments due to the corporate defendant, which resulted in extensive litigation over these assets and ultimately cost the receivership estate tens of thousands of dollars.

h. On August 9, 2006, in *FTC v. Connelly*, No. 8:06-cv-701 (C.D. Cal. 2006), the court issued an *ex parte* TRO with an asset freeze against one defendant, but issued a noticed Order to Show Cause to two other defendants, ordering them to show cause as to why their assets should not be frozen. Having notice that the FTC sought to freeze their assets, the defendants nevertheless withdrew at least \$800,000, some of which was subject to the asset freeze, and most of which was never recovered.

i. In *FTC v. Universal Premium Servs., Inc.*, No. 2:06-cv-849 (C.D. Cal. 2006), a defendant and his wife withdrew over \$45,000 from their joint personal bank account, which the bank had not yet frozen, hours after he was personally served with an *ex parte* TRO that included an asset freeze.

j. In *FTC v. World Traders Ass'n*, No. 2:05-cv-591 (C.D. Cal. 2005), notwithstanding an *ex parte* TRO, including an asset freeze, the lead defendants appropriated \$90,459 from a frozen bank account within one day of being served with the TRO. Although the contempt resulted in subsequent criminal indictments, the money was never recovered.

k. In *FTC v. Unicyber Tech. Inc.*, No. 2:04-cv-1569 (C.D. Cal. 2004), the FTC obtained an *ex parte* TRO with asset freeze and appointment of a receiver. Shortly after service of the TRO, the defendant directed his wife to violate the asset freeze by transferring \$405,000 of corporate funds to her father. With the assistance of the receiver, the FTC was able to recover these funds.

l. In *FTC v. 4049705 Canada Inc.*, No. 1:04-cv-4694 (N.D. Ill. 2004), Canadian authorities executed a search warrant on the business premises of Canadian defendants who were engaged in telemarketing fraud. Thereafter, the FTC filed a complaint and motion for a TRO with an asset freeze, providing notice to defendants. The FTC discovered that the defendants had made several substantial money transfers after receiving notice of the FTC's action, but before application of the asset freeze.

m. In *FTC v. QT, Inc.*, No. 1:03-cv-3578 (N.D. Ill. 2003), defendants, after notice of a TRO with an asset freeze, withdrew and transferred more than \$2 million dollars from banks that had not yet received notice of the asset freeze.

n. In *FTC v. Physicians Healthcare Dev., Inc.*, No. 2:02-cv-2936 (C.D. Cal. 2002), the day after service of a TRO, Commission staff arrived at defendants' offices to review business records but found that documents had been shredded and that computers and other business records had been removed from the premises. Witnesses advised

Commission staff that, on the day of the hearing, they observed defendants' employees removing computers and other items from the premises. The records were never recovered.

21. Courts in this district regularly issue *ex parte* temporary restraining orders in actions brought under Section 5(a) of the FTC Act. *See, e.g., FTC v. Student Debt Doctor, LLC*, No. 17-cv-61937-WPD, Dkt. No. 9 (entering *ex parte* TRO granting asset freeze, immediate access, expedited discovery, and appointment of receiver); *FTC v. Strategic Student Solutions LLC*, No. 17-cv-80619-WPD, Dkt. No. 10 (S.D. Fla. May 15, 2017) (same); *FTC v. DOTAuthority.com, Inc.*, No. 16-cv-62186-WJZ, Dkt. No. 29 (S.D. Fla. Sept. 19, 2016) (same); *FTC v. World Patent Marketing*, No. 17-cv-20848-DPG, Dkt. No. 11 (same); *FTC v. Mail Tree Inc.*, No. 15-cv-61034-JJC, Dkt. No. 16 (same); *FTC v. Centro Natural Corp.*, No. 14-cv-23879-CMA, Dkt. No. 10 (same); *FTC v. Partners in Health Care Ass'n, Inc.*, No. 14-cv-23109-RNS, Dkt. No. 9 (same); *FTC v. FMC Counseling Svcs., Inc.*, No. 14-cv-61545-WJZ, Dkt. No. 15 (same); *FTC v. Marcus*, No. 17-cv-60907-FAM, Dkt. No. 13 (May 9, 2017) (entering *ex parte* TRO granting asset freeze, immediate access, and appointment of receiver); *FTC v. Consumer Collection Advocates Corp.*, No. 14-cv-62491-BB, Dkt. No. 10 (same); *FTC v. Diversified Educational Resources, LLC*, No. 14-cv-62116-JJC, Dkt. No. 14 (entering *ex parte* TRO granting asset freeze, immediate access, and expedited discovery); *FTC v. 7051620 Canada, Inc.*, No. 14-cv-22132-FAM, 2014 WL 12039368 (S.D. Fla. June 12, 2014) (entering *ex parte* TRO granting asset freeze); *FTC v. Regency Fin. Servcs., LLC*, No. 15-cv-20270-DPG, Dkt. No. 9 (same); *FTC v. Dluca*, No. 18-cv-60379-KMM, Dkt. Nos. 17, 23 (same).

22. For the above reasons, as contemplated by Fed. R. Civ. P. 65(b)(1), there is good cause to believe that immediate and irreparable damage will result, including the destruction of

Defendants' records and the dissipation or concealment of assets, if Defendants receive advance notice of the TRO Motion. Thus, it is in the interest of justice that this Court grants the motion without notice.

23. For the same reasons, there is good cause to believe that immediate and irreparable harm will result if any of the Defendants receive premature notice of the filing of this action. Thus, the interests of justice would be served if the Court grants the Commission's Emergency *Ex Parte* Motion to Temporarily Seal the Docket and Entire File.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2018, in Washington, DC.



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